

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE SUB-REGISTRY OF MANYARA**

**AT BABATI**

**MISCELLANEOUS LAND APPLICATION NO. 24 OF 2023**

*(Arising Ext. Jurisdiction Land Appeal 10 of 2022 formerly Land Appeal No. 14 of 2022 at the High Court of Tanzania Arusha Sub registry and originating from Land Application No. 20 of 2018 at District Land and Housing Tribunal for Babati at Babati)*

**MISLAY MASONG..... APPLICANT**

**VERSUS**

**HUMRY MASONG..... 1<sup>ST</sup> RESPONDENT**

**TLUWAY MASONG.....2<sup>ND</sup> RESPONDENT**

**RULING:**

*6<sup>th</sup> & 22<sup>nd</sup> June 2023.*

***Kahyoza, J.:***

**Mislay Masong**, an administrator of estate of the late **Keha Masong**, (**Mislay**) sued **Humry Masong** and **Tluway Masong** before the District Land and Housing Tribunal for Babati at Babati for vacant possession, and lost. He appealed to this Court Arusha sub registry.

The High Court- Arusha sub registry transferred **Mislay's** appeal to the resident magistrate with extended jurisdiction under section 41A(3) of the

**Land Disputes Courts Act**, [Cap. 216 R.E. 2019], ( the **LDCA**). Section 41A (3) of the LDCA stipulates that-

*(3) The **High Court** may direct that an appeal or revision instituted in the High Court be transferred to and be heard by a resident magistrate upon whom extended jurisdiction has been conferred by this section. ( Emphasis added)*

The resident magistrate with Extended Jurisdiction dismissed the appeal and upheld the decision of the DLHT. Aggrieved, **Mislay** preferred an application for revision to this Court.

On the date set for hearing the application, only **Mislay** appeared. The respondents did not enter appearance or file a counter affidavit prior to the date of hearing. Before the hearing the application on merit, I entertained doubts whether it was proper for the applicant to seek this Court to revise the decision of Hon. Chitanda, the resident magistrate with extended jurisdiction. I invited the applicant to address this Court as to whether the application is properly before this court.

**Mislay**, the applicant, a layperson, had nothing substantial to say, rather he contended that his application is properly before this court.

It is self-evident that **Mislay** instituted his appeal to the High Court and the High Court transferred it to be heard by the resident magistrate with extended jurisdiction. The resident magistrate with extended jurisdiction shall be deemed to be the judge of the High Court as provided by section 41A (2) of **the LDCA**. It reads-

**"41A. Extended jurisdiction**

(1)...

(2) *For the purpose of any appeal from or revision in the exercise of jurisdiction referred to under subsection (1), **the resident magistrate with extended jurisdiction shall be deemed to be the judge of the High Court, and court presided over by him while exercising such jurisdiction shall be deemed to be the High Court.*** (emphasis is added)

In addition, the court presided over by the resident magistrates with extended jurisdiction is deemed to be the High Court. Hence, Hon. Chitanda, the resident magistrate with extended jurisdiction when heard **Mislay's** appeal was deemed to be the Judge of the High Court and her court was deemed to be the High Court. Consequently, the judgment of the resident magistrate with extended jurisdiction is deemed to be the judgment of this Court.

The next question is whether a court can revise its own decision or the decision which is deemed to be its own decision. Revision is a tool bestowed to superior courts or tribunal to supervise courts or tribunal subordinate to it. Revisional jurisdiction is jurisdiction a superior court or tribunal has to call and examine the correctness, legality or propriety of the proceedings, order of judgment of a court or tribunal subordinate to it. The Court of Appeal in **African Marble Company Limited (Amc) V. Presidential Parastatal Sector Reform Commission (Psrc)**, Civil Application No 47 Of 2007 (unreported) defined revision as follows-

*"In our view we think at this juncture it is prudent to know **the meaning of "revision."** According to Black's Law Dictionary, Seventh Edition the meaning of **revision is "a re examination or careful review for correction or improvement."** According to the Reader's Digest Wordpower Dictionary the word revision is defined as "the action of revising." And the meaning of "revise" is "examine and improve or amend. Reconsider and alter an opinion or judgment." In both dictionaries the catchwords appear to be "**a careful examination for correction or improvement.**"*

Revision is therefore, a careful examination for correction or improvement of the record of a court or tribunal subordinate to it. A court cannot correct its own decision by way of revision. No court has jurisdiction to call its own proceedings and examine its correctness. The current

application was filed under section 79 of the Civil Procedure Code, [Cap. 33 R.E. 2019] (the CPC), which states that-

*"79.-(1) The **High Court may call for the record** of any case which has been decided by **any court subordinate** to it and in which no appeal lies thereto, and if such subordinate court appears-*

*(a) to have exercised jurisdiction not vested in it by law;*

*(b) to have failed to exercise jurisdiction so vested; or*

*(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity,*

*the High Court may make such order in the case as it thinks fit."*

*(Emphasis supplied)*

Section 79 of the CPC gives this Court mandate to call any record of the court subordinate to it and examine its correctness, it does not give it mandate to call and examine its own record. The record and judgment of of the resident magistrate with extended jurisdiction is deemed to be the record and judgment of this Court, thus, this Court has not mandate to revise it. It is settled that an appeal against the decision of the resident magistrate with extended jurisdiction lies to the Court of Appeal. See section 4 of the **Appellate Jurisdiction Act**, [Cap. 141 R.E. 2019]. Likewise, an application for revision from of the resident magistrate with extended jurisdiction lies to the Court of Appeal.

In the end, I find that the application for revision from the decision of the resident magistrate with extended jurisdiction was wrongly filed with this Court. **Mislay** was bound to file the application for revision or to appeal from the decision of the resident magistrate with extended jurisdiction to the Court of Appeal. Consequently, I find the application incompetent and strike it out. I make no order as to costs.

It is ordered accordingly.

**Dated** at Babati, this 22<sup>nd</sup> day of June, 2023.



A handwritten signature in black ink, appearing to read 'John R. Kahyoza', is written over a horizontal line.

**John R. Kahyoza,  
Judge**

**Court:** Ruling delivered in the applicant and in the absence of the respondent. B/C Mr. Shedrack (RMA) present.

A handwritten signature in black ink, appearing to read 'John R. Kahyoza', is written over a horizontal line.

**John R. Kahyoza, J.  
22/06/2023**